

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO - WESTERN DIVISION**

GERALD CASH, <i>et al.</i>	:	Case No. C-1-01-753
	:	
Plaintiffs,	:	(Honorable Sandra S. Beckwith)
	:	
v.	:	DEFENDANTS' JOINT MEMORANDUM
	:	IN OPPOSITION TO MOTION TO
HAMILTON COUNTY DEPT. OF ADULT	:	SUBSTITUTE PARTY FOR PLAINTIFF
PROBATION, <i>et al.</i>	:	GERALD CASH
	:	
Defendants	:	

For the reasons stated with more particularity in the attached Memorandum of Law, Defendants Michael L. Walton and the Hamilton County Department of Adult Probation and the City of Cincinnati, jointly oppose Plaintiff Gerald Cash's Motion to Substitute Party.

Respectfully submitted,

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

by: /s/ David T. Stevenson
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Adult Probation and Michael Walton, Chief
Probation Officer*

J. RITA MCNEIL
CITY SOLICITOR
CINCINNATI, OHIO

by: /s/ Richard Ganulin
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Trial Counsel for the City of Cincinnati

MEMORANDUM OF LAW

Civil Rule 25 requires a motion for substitution to be made within 90 days after death is suggested upon the record. A suggestion of death was filed upon the record in this matter on November 5, 2003. Over two and one-half years have passed since the suggestion of death was filed by plaintiffs. No motion has been tendered on behalf of Gerald Cash or Clara Cash to substitute their successors or representatives. Dismissal of the claims of Gerald Cash and Clara Cash is therefore appropriate. *Russell v. City of Milwaukee Employees' Retirement System Annuity and Pension Bd.*, 338 F.3d 662 (7th Cir. 2003).

In addition, Plaintiffs have simply not acted with the diligence required to preserve the claims of Gerald and Clara Cash. Though an estate was opened on behalf of Gerald Cash in the Hamilton County Probate Court on January 7, 2005, and an administrator appointed (see attached appointment of an administrator), no action was taken to substitute the estate in this action. Until the filing of the motion that is the subject of this memorandum. No action was taken with respect to Clara Cash at all. No estate has been opened on her behalf. Plaintiffs only filed this motion in response to the Defendants' joint motion to dismiss the claims of Gerald and Clara Cash. The motion is untimely and not well-taken and therefore ought to be denied.

III. CONCLUSION

For the foregoing reasons, the Defendants jointly request that Gerald Cash's Motion to Substitute be denied and all claims made on his behalf be dismissed.

Respectfully submitted,
JOSEPH T. DETERS
PROSECUTING ATTORNEY

HAMILTON COUNTY, OHIO

by: /s/ David T. Stevenson

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on the 23rd day of August through the electronic filing system of the United States District Court for the Southern District of Ohio, which will cause service to be made upon:

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